Decision **DRAFT DECISION OF ALJ DUDA (Mailed 4/25/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 06-03-004 (Filed March 2, 2006)

ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE'S RULING REDUCING SOLAR PHOTOVOLTAIC INCENTIVES

This decision affirms the Administrative Law Judge's (ALJ) ruling of April 24, 2006, which reduces solar photovoltaic (PV) incentives from $2.80/watt to $2.50/watt. The ruling is attached to this decision as Appendix A.

In Decision (D.) 06-01-024, the Commission created the California Solar Initiative program, budgeting approximately $2.8 billion for solar incentives and programs over an eleven-year period, from 2006 to 2016. In order to preserve program funds for the entire eleven year program, the Commission adopted an automatic "trigger" mechanism to reduce the incentives paid on a calendar year basis, or when program participation reached specific megawatt (MW) levels.

A ruling of March 21, 2006 in this proceeding provided parties notice that applications for solar incentives under the Self-Generation Incentive Program (SGIP) in 2006 had exceeded the first 50 MW "trigger" for automatic incentive reductions. The ruling directed SGIP administrators to reduce solar PV incentive payments from $2.80/watt to $2.50/watt for all program applications exceeding the 50 MW threshold. The ruling allowed parties to comment within seven days if they had objections to the implementation of the automatic trigger mechanism.

Comments were submitted by several parties, generally supporting the reduction in solar incentives, but disagreeing with certain elements of the reduction's implementation.

In response to the comments received, the ALJ determined that a second ruling was necessary to respond to the confusion and uncertainty over how to implement the automatic trigger reduction. A second ruling was issued on April 24, 2006 confirming the March 21, 2006 ruling and clarifying certain details in order to implement the automatic trigger reduction. This decision affirms the ALJ's ruling of April 24, 2006, as written.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on ____ and reply comments were filed on _____.

Assignment of Proceeding

President Michael R. Peevey is the Assigned Commissioner and Dorothy Duda is the assigned ALJ in this matter.

Findings of Fact

1. Applications for the SGIP have exceeded the 50 MW trigger adopted in D.06-01-024.

2. The ALJ issued a ruling on March 21, 2006 directing the SGIP program administrators to reduce solar PV incentive payments from $2.80/watt to $2.50/watt for all program applications exceeding the 50 MW threshold.

3. The ALJ issued a second ruling on April 24, 2006 clarifying several implementation details of the trigger reduction.

Conclusion of Law

The trigger reduction mechanism should be implemented according to the guidance provided by the ALJ in her ruling of April 24, 2006.

O R D E R

IT IS ORDERED that:

1. The Administrative Law Judge ruling of April 24, 2006 is affirmed.
2. This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 06-03-004 (Filed March 2, 2006)

ADMINISTRATIVE LAW JUDGE'S RULING CONFIRMING REDUCTION IN SOLAR PHOTOVOLTAIC INCENTIVE PAYMENTS

This ruling confirms and clarifies the automatic reduction of incentive payments for solar photovoltaic (PV) projects from $2.80/watt to $2.50/watt, as first noticed in a ruling of March 21, 2006, based on the procedure set forth in Decision (D.) 06-01-024.

Background

In D.06-01-024, the Commission created the California Solar Initiative (CSI) with a total budget for solar incentives and programs of $2.8 billion over 11 years. The CSI budget includes $342 million budgeted for the solar portion of the 2006 Self-Generation Incentive Program (SGIP) in D.95-12-044. Under the 2006 SGIP program, the Commission initially pays solar incentives of $2.80/watt for qualifying new solar projects. In creating the CSI, the Commission adopted an automatic mechanism to reduce solar incentive payments at the beginning of each calendar year or when program participation reaches specific megawatt (MW) levels, whichever is earlier. (D.06-01-024, Appendix A, p. 15.)

A ruling on March 21, 2006 in this proceeding provided parties notice that applications for solar incentives under the SGIP program in 2006 had exceeded the first 50 MW "trigger" for automatic reductions. That ruling relied on information provided by the Commission's Energy Division staff that total solar PV project applications as of March 9, 2006 equaled 91 MW. The ruling directed the SGIP program administrators (PAs) to reduce solar PV incentive payments from $2.80/watt to $2.50/watt for all 2006 program applications exceeding the 50 MW threshold. The ruling allowed parties to comment within seven days if they had any objections to the implementation of the automatic trigger mechanism. Comments on the ruling were timely filed by Americans for Solar Power (ASPv), the California Solar Energy Industries Association (CAL SEIA), Pacific Gas and Electric Company (PG&E), Pv Now, Southern California Edison (SCE), San Diego Gas and Electric and Southern California Gas Company (SDG&E/SoCalGas), San Diego Regional Energy Office (SDREO), Sun Light & Power Company, and The Utility Reform Network (TURN).

Responses to Ruling

The responses generally support the concept of a reduction in solar incentives to $2.50/watt, but they disagree with critical elements of implementing the reduction. For example, several commentors request that the Commission not apply the incentive reduction to any project that had already submitted an application as of the date of the ruling. They ask that all applications received up to the date of the ruling, which total 91 MW in capacity, receive the higher $2.80/watt incentive. Others request the Commission provide 30 day or more advance notice of incentive reductions. Several parties explain they assumed the trigger mechanism adopted in D.06-01-024 applied only to the CSI beginning in 2007 and not to the SGIP program in 2006. Others suggest that

a trigger mechanism should not be applied statewide, but should apply by utility service territory. Thus, if one utility had fewer applications and had not reserved its allocation of CSI funds, it should continue to pay a higher incentive level.

Comments from solar industry participants generally urge the Commission to not reduce solar incentives for applications already submitted. ASPv and PV Now recommend that the 50 MW trigger should be based not on applications received, but on "confirmed reservations," which means that applicants have submitted proof of project advancement including completed interconnection forms and signed customer contracts for their projects.

Almost all commentors asked for better communication from program administrators, *i.e.*, the utilities and SDREO, to program participants concerning the applications received. They suggest that the Commission should direct program administrators to provide web-based information concerning the MW level of incentives applied for and reserved on a more frequent basis (*i.e.,* daily or weekly). This would provide customers and solar installers advance notice of incentive applications and reservations, sufficient to indicate when applications are approaching another MW-based reduction threshold.

Further Guidance to Program Administrators

The comments on the March 21, 2006 ruling indicate that a general level of confusion and uncertainty exists surrounding implementation of the first trigger reduction in solar incentive levels. In some cases, parties have vastly different views concerning the appropriate method for applying the trigger. The confusion is understandable given this is the first time the trigger has been activated and the activation has occurred much sooner than anticipated.

Decision 06-01-024 adopted an automatic mechanism to reduce incentive payments if demand exceeds specific targets proposed by Staff of the

Commission and the California Energy Commission (CEC). The decision further delegated authority to the Administrative Law Judge (ALJ) to reduce incentives upon written justification provided by Staff. In light of that authorization, this ruling is necessary to clarify the process for implementing the automatic trigger reduction that was adopted in D.06-01-024. In response to the comments and suggestions of the parties, I provide the following guidance:

1. **The implementation of the automatic trigger as set forth in of the March 21, 2006 ruling is unchanged. The program administrators shall ensure that the rebate level is reduced to $2.50/watt for reservations exceeding 50 MW.**

The 50 MW trigger shall be based on "conditional reservations" issued by the program administrators, and the 50 MW shall be proportionately allocated across utilities based on their CSI budget allocations.[1] This interpretation of the trigger in D.06-01-024 is supported by the language of that order which states the Commission's intent to automatically reduce incentive payment levels each year by 10% or more if demand exceeds the targets proposed by staff. (D.06-012-024, *mimeo.,* at 25.)

The Commission established the trigger mechanism in D.06-01-024 to preserve program funds over the 11 year term of the CSI. In that order, the Commission authorized annual budgets for the utilities and a mechanism to borrow up to 15% of future years funds. While parties urge the Commission to ignore the triggers for 2006 and maintain the $2.80/watt incentive level for this entire year, that desire ignores the intent of D.06-01-024 to balance program

[1] CSI program funds are allocated 44% to PG&E, 34% to SCE, 13% to SDG&E and 9% to SoCalGas. (D.06-01-024, Table 2, p. 7.) Therefore, the 50 MW cap is allocated 22 MW to PG&E, 17 MW to SCE, 6.5 MW to SDG&E and 4.5 MW to SoCalGas.

demand with the supply of ratepayer funds over the entire term of the CSI to ensure optimal funding. The Commission established automatic incentive reductions and delegated to the assigned Administrative Law Judge (ALJ) the ability to make further incentive reductions upon the advice of CEC and Commission staff.

I acknowledge that sudden changes in incentive levels, particularly after a participant has submitted an application, may initially cause confusion. However, the Commission gave notice in D.06-01-024 that such charges could occur. The Commission clearly adopted an "automatic trigger" and, absent a further order of the Commission, the trigger reduction process shall continue. Parties urge the Commission to make the trigger mechanism more sensitive to market conditions. This issue should be considered in Phase I of this rulemaking. I will address this in the scoping memo to be issued jointly with Commissioner Peevey.

A key point of confusion regarding the automatic trigger is whether the 50 MW threshold should be based on project applications, on the initial application screening and payment of the application fee (*i.e.* "conditional reservation"), or on final screening and execution of a signed contract for solar installation (*i.e.* "confirmed reservation"). PV Now and ASPv recommend that the Commission should base the 50 MW trigger on confirmed reservations because confirmed reservations represent projects that have progressed through the necessary steps and are ready to be completed. These parties propose that the Commission should not lower incentive payments until program administrators have received signed contracts for 50 MW of solar PV installations.

The drawback to this method, however, is that customers would have to sign contracts without knowing the exact level of their incentive payment. This is a critical flaw and could seriously dampen program participation. Instead, I find it more reasonable to base the trigger on the first 50 MW "conditionally reserved." The program administrators must determine which applications are the first 50 MW to meet the conditional reservation criteria. If they have sent letters conditionally reserving more than their allocation of the 50 MW, they must use either the time of application received or a lottery method to reduce their conditional reservations to the authorized MW level. Then, the PAs must notify those applicants who may have received a conditional reservation prematurely that they are not among the first 50 MW and the incentive level for their application is now $2.50/watt. To ensure this situation is clearly explained to applicants, I direct the administrators to draft a notification letter for such instances, to be reviewed and approved in advance by ED staff. In the future, the PAs should carefully monitor the statewide total MW of applications reaching the conditional reservation stage and avoid sending conditional reservation letters beyond the next trigger cutoff. Future communications with project applicants should make clear that there is no guarantee of a particular incentive level until a conditional reservation is issued, and then only if the project meets all other SGIP or CSI guidelines as it proceeds toward completion.

Several commentors maintain the Commission should provide advance notice to program participants prior to reducing incentive levels. They contend that all applications received up to the date of the March 21, 2006 ruling should receive the higher incentive of $2.80/watt and the Commission should not "retroactively" reduce incentives for those applications already received. I can appreciate parties' concerns. However, the Commission must ensure prudent

incentive levels and sufficient funding to meet the long term goals set forth in the CSI decision. The Commission was clear in D.06-01-024 that incentives would be reduced when 50 MW had been reserved under the CSI, and the 2006 SGIP is the vehicle for the CSI program in 2006. With 91 MW in applications within the first month of the 2006 program, it is impossible to give advance notice. Essentially, the launch of the 2006 program created a "run on the bank" and the program administrators continued to send conditional reservations letters past the 50 MW threshold without waiting for guidance from the Commission.

The Commission has stated that its primary objective in establishing a trigger mechanism is to preserve program funding over the 11 years of the CSI program. The market participants themselves ultimately control activation of the triggers and corresponding incentive reductions. The fact that applications surged in and quickly exceeded the automatic trigger, and that the Commission became aware of this only after the fact, does not mean that any incentive reduction is retroactive. Regrettably, the PAs continued to process applications and send out conditional reservations beyond the 50 MW cap. The first and subsequent trigger points were clearly stated in advance. It was only PA's communication to the Commission that the trigger had been reached that occurred after the fact.

As guidance for future implementation of the automatic trigger mechanism, the PAs shall coordinate and carefully monitor the level of conditional reservation letters they process on a statewide basis, and post this information as described below on their individual public websites for all interested stakeholders to observe. They should notify the Commission, by letter to the assigned ALJ, when the next statewide trigger is met and automatically impose the incentive reduction when conditional reservations meet the triggers

adopted in D.06-01-024, unless a further Commission order or ALJ ruling provides new direction. Thus, the PAs should cease processing conditional reservations at a given incentive when the MW cap is reached for that incentive level. The assigned ALJ will notify the parties by ruling that a trigger reduction has occurred. D.06-01-024 limits the number of incentive reductions in one calendar year to two,[2] so PAs will not be expected to implement a third trigger during 2006. If the second trigger amount is reached, PAs should notify the Assigned ALJ and Energy Division staff, but continue to process applications at the applicable incentive level (if any budget remains for the calendar year).

2. Incentive levels will remain consistent statewide, and not vary by utility service area.

The PAs suggest that when applications in one utility service territory reach that utility's portion of the MW trigger (based on budget allocation), the incentive in that territory would reduce, but remain at the higher level in other utility service territories. SDG&E/SoCalGas and SDREO contend the reduction in incentive levels should be consistent statewide. In reviewing the trigger mechanism set forth in D.06-01-024, I find no indication the Commission intended for separate triggers by utility service area. The trigger mechanism supports a uniform statewide rebate level and implementation of the trigger should maintain this. Therefore, when future MW trigger levels are reached based on a statewide assessment of conditional reservations, the statewide rebate level should be adjusted downwards.

[2] D.06-01-024, Appendix A, p. 16.

3. The trigger applies to the new 2006 SGIP applications.

Several parties interpreted the trigger reduction mechanism in D.06-01-024 to begin in 2007 and not apply to 2006 SGIP applications. D.06-01-024 clearly indicates that the 2006 budget for SGIP is part of the 11-year total budget for the CSI. (D.06-01-024, Table 1, p. 6.) Thus, the SGIP in 2006 uses CSI funds and the trigger applies. This is further supported by the table in Appendix A of D.06-01-024 specifying that the rebate level will decline on 1/1/07 or when 50 MW in reservations are reached. (*Id*., Appendix A, pp. 14-15.) It does not make sense for the table to describe the *earlier* of 1/1/07 or a specific MW level if it could not take effect before 1/1/07.

As noted in the March 21, 2006 ruling, SGIP applications on the waiting list as of December 15, 2005, will receive $3.00/watt, pursuant to D.05-12-044.

4. The incentive reduction does not apply to projects less than 30 kW funded through the CEC ERP program.

The CEC's ERP program uses a different funding source than the SGIP/CSI program, therefore, the incentive reduction to $2.50/watt does not apply to projects funded through ERP in 2006.

5. The PAs should develop a web-based communication system to provide better data to program participants regarding the level of applications processed and reserved.

Most parties commented that program participants need better real-time information regarding the level of applications so they can have advance notice that a trigger reduction is looming. I agree. This is particularly critical because the next trigger occurs at 70 MW of additional conditionally reserved applications. As of March 9, 2006, 41 MW in applications had been received that could become conditional reservations toward this next trigger.

The program participants need access to the level of applications and conditional reservations to gauge the likelihood of obtaining a given incentive level.

Each PA currently posts utility territory-specific data regarding the number of applications received and megawatts reserved, and the levels of available funding on the PAs' individual websites. This ruling directs the PAs to establish a statewide posting format which provides a weekly or more frequent update of the project applications that have reached the conditional reservation stage statewide.

6. **The Commission will consider improvements to the trigger mechanism, including differential incentives by project size or customer class, in the course of this rulemaking. Changes to the application fee will be considered as well.**

Several parties suggest that the trigger adopted in D.06-01-024 needs further refinement to be responsive to market conditions. Similar comments were made at the prehearing conference on March 23, 2006 to set the scope of this case. In both D.05-12-044 and D.06-01-024, the Commission recognized the need for additional analysis and record development on market factors that could influence optimal incentive levels, such as the federal tax credit. As I consult with President Peevey on the proper scope and schedule for this case, I will delineate this issue as a top priority for consideration in Phase I, with a decision target during the summer of 2006. It is not possible to adjust the factors affecting the trigger metric any sooner, without further record development and a Commission order.

Moreover, the PAs contend that the application fee should be raised because as incentive levels fall, so does the application fee. Parties with this viewpoint may offer their proposals along with refinements to the trigger mechanism as they comment on incentive level proposals in Phase I.

Therefore, **IT IS RULED** that:

1. This ruling confirms the prior ruling of March 21, 2006 ordering the program administrators for the Self-Generation Incentive Program (SGIP), in coordination with Energy Division Staff, to ensure that incentive payment levels for solar photovoltaic (PV) projects are reduced from $2.80/watt to $2.50/watt for all 2006 program applications that exceed 50 MW in conditional reservation status. This ruling also provides additional guidance on the implementation of incentive reductions through automatic triggers.

2. For the first incentive reduction, the program administrators shall ensure that the 50 MW cap is allocated proportionately across the utilities based on the CSI budget allocations adopted in D.06-01-024, using either the time of application or a lottery method to reduce each utility's conditional reservation quantity to the appropriate level. Future trigger reductions will be based on a statewide assessment of conditional reservation levels, informed by the tracking of applications and reservations in each utility's territory.

3. The program administrators shall inform applicants for solar incentives who may have received a conditional reservation prematurely that they will now receive an incentive level of $2.50/watt if their application is not among the first 50 MW received. The administrators shall obtain advance review and approval by the Energy Division staff of the language in such notification letters.

4. In order to implement future incentive adjustments, the program administrators are directed to coordinate and carefully monitor the level of conditional reservations processed on a statewide basis to avoid sending conditional reservation letters beyond the next trigger, and to notify the assigned ALJ by letter when the next trigger is met.

5. The program administrators shall automatically impose the incentive reduction when the triggers in D.06-01-024 are met, up to twice per calendar year, unless directed differently by further Commission order or ruling.

6. Within 15 days of this ruling, the program administrators are directed to post on each of their public websites application and reservation information, including a statewide cumulative total of the MW capacity of incentives applied for and conditionally reserved. This website should be updated on a weekly or more frequent basis.

Dated April 24, 2006, at San Francisco, California.

/s/ Dorothy J. Duda
Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Confirming Reduction in Solar Photovoltaic Incentive Payments on all parties of record in this proceeding or their attorneys of record.

Dated April 24, 2006, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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(END OF APPENDIX A)